



# CROCKER NATIONAL BANK

COMMERCIAL FINANCE DEPARTMENT / 79 NEW MONTGOMERY ST., SAN FRANCISCO, CA 94105

10923

RECORDATION NO. .... Filed 1425

October 19, 1979

OCT 23 1979 - 8 45 AM

INTERSTATE COMMERCE COMMISSION

3-296A011

Interstate Commerce Commission  
12th & Constitution Avenue, N.W.  
Room 2303  
Washington, D.C. 20438

OCT 23 1979

Date 50.00  
Fee \$ 50.00

ICE Washington, D.C.

Attention: Mildred Lee

Dear Ms. Lee:

Enclosed herewith for immediate recordation are two Security Agreements, together with a \$50.00 check covering your filing fee. The name and address of the Secured Party is as follows:

Crocker National Bank  
595 Market Street  
San Francisco, CA 94105

The name and address of the Borrower is:

TransKentucky Transportation Railroad Company  
Kincaid Tower  
Lexington, Kentucky 40507

Your prompt attention to this matter is appreciated.

Very truly yours,

*Hilary M. Osofsky*

HILARY M. OSOFSKY,  
Attorney

HMO/jbs

Enclosures

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

10/30/79

OFFICE OF THE SECRETARY

Hilary M. Osofsky, Atty.  
Crocker National Bank  
Commercial Finance Dept.  
79 New Montgomery St.  
San Francisco, Calif. 94105  
Dear

Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/23/79 at 8:45am, and assigned recordation number(s). 10923

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

50

10923

RECORDATION NO. \_\_\_\_\_ Filed 1425

SECURITY AGREEMENT

OCT 23 1979-8 45 AM

INTERSTATE COMMERCE COMMISSION

THIS SECURITY AGREEMENT (hereinafter referred to as the "Agreement") dated as of Oct 19, 1979, between Crocker ~~Equipment Leasing Inc~~ National Bank ("Lender") with its place of business at ~~595 Market Street, San Francisco~~ 595 Market Street, San Francisco, California, and TransKentucky Transportation Railroad Company a (X) corporation, ( ) sole proprietorship, ( ) partnership, (hereinafter called "Borrower") with ( ) its sole place of business ( ) its chief executive office (if it has more than one place of business, or residence, if Borrower is an individual) located at KINCAID TOWER,  
LEXINGTON, KENTUCKY 40507

1. Borrower hereby grants Lender a security interest in the following (collectively the "Collateral" and individually an "Item of Collateral"):

All items, whether now owned or hereafter acquired, listed on each and every Schedule of Collateral now or hereafter executed by the parties hereto (collectively the "Schedules" and individually a "Schedule"), together with any and all insurance policies covering all such items, and all replacements, substitutions, accessions, additions and improvements to any of the foregoing, and all products and proceeds of the foregoing, including but not limited to, all accounts, instruments, chattel paper, notes, general intangibles, goods, inventory, insurance proceeds, deposit accounts, money and other tangible and intangible property of Borrower resulting from any sale or disposition of the foregoing.

2. Lender's security interest shall secure  
(a) the payment of Borrower's indebtedness to Lender,  
together with interest thereon, as evidenced by any  
and all promissory notes now or hereafter made by  
Borrower to Lender's order (collectively, the "Notes"  
and individually, a "Note"); (b) all future advances  
made by Lender to or for the account of Borrower,  
including advances for rent, insurance, storage,  
repairs to and maintenance of the Collateral, taxes  
and discharge of any other lien, security interest or encumbrance;  
~~(c) all other debts, obligations and liabilities of~~  
~~Borrower to Lender, however created or evidenced,~~  
~~direct or contingent, and whether now or hereafter~~  
~~existing;~~ <sup>(b)</sup> and (d) all costs and expenses incurred in  
the collection of any of the foregoing, including  
reasonable attorneys' fees and expenses. All of the  
foregoing items (a) through <sup>(c)</sup> ~~(d)~~ shall hereinafter be  
referred to as "Obligations."

3. Now, and for so long as any Obligations  
shall remain outstanding, Borrower warrants, represents,  
and agrees that: (a) it will defend title to the  
Collateral and the security interest of Lender therein  
against the claims and demands of all persons; (b) it  
will, at its own cost and expense, keep the Collateral  
in a good working order and repair, and in the event  
of any loss, theft, or damage to the Collateral shall  
give Lender prompt written notice thereof; (c) it will  
not waste, destroy, misuse, abuse or illegally use  
the Collateral, or any part thereof, and will not be  
negligent in its care; (d) it will not remove  
destroy, abuse, obliterate, amend, change, cover,

paint, deface, or alter the name plates, serial numbers, labels, or other distinguishing numbers or identification marks placed upon the Collateral, or any part thereof, by or on behalf of the manufacturer, any dealer in or rebuilder thereof, or Lender;\* (e) all of the Collateral is and will be owned by Borrower alone, free and clear of any and all attachments, levies, liens, claims, security interests and encumbrances of every kind and nature, and no financing statements or other notices covering any of the Collateral is or will be on file in any public office, excepting only the security interest granted Lender hereunder and any financing statement or notice filed by Lender with respect thereto; (f) it will not sell, assign, transfer, lease, or otherwise dispose of the Collateral, or any interest therein, or suffer the Collateral, or any part thereof, to come into the possession of any other person; (g) it will not secrete, abandon or remove, or suffer the removal of the Collateral, or any part thereof, from the location(s) stated in the Schedule describing each such Item of Collateral; (h) it will promptly notify Lender of any change in Borrower's address from that stated above; (i) it will not be released from this Agreement because of the loss, injury or destruction of the Collateral; (j) it will allow Lender and its representatives free access to and right of inspection of the Collateral at all times; (k) it will, at its own cost and expense, pay all taxes or other charges in connection with the Collateral and its use, ownership, or possession; (l) it will comply with the terms and conditions of any leases covering the Collateral

and provided further that Borrower shall promptly stencil the following legend upon the Collateral: "Ownership subject to a Security Agreement filed under the Interstate Commerce Act, section 20(c)"; and

~~xxxxxx~~ and any orders, ordinances, laws or statutes ~~xxx~~ cy  
of any city, state or governmental department having  
jurisdiction with respect to such <sup>Collateral</sup> ~~xxxxxx~~ or the ~~xxx~~ cy  
conduct of business thereon; (m) the Collateral is,  
and at all times shall remain, personal property not-  
withstanding that it, or any part thereof, may now  
be, or hereafter become, in any manner affixed to  
or embedded in real property or any improvement thereon;  
(n) it will, upon Lender's request, execute and deliver to Lender,  
at Borrower's sole cost and expense, any and all written  
instruments and documents, including without limitation  
financing statements, in form and substance satisfactory  
to Lender, and do any other acts necessary to effectuate  
the purposes and provisions of this Agreement. Borrower  
hereby irrevocably appoints Lender as its lawful attorney  
and agent to execute financing statements on its behalf,  
and authorizes and directs Lender to file on its behalf such  
financing statements in any appropriate public office;\* ~~xxx~~ cy  
(o) it will not do or permit any act to be done for which  
the Collateral might be confiscated; (p) any or all papers,  
documents, instruments, contracts, agreements, memoranda,  
receipts, guaranties, certificates, statements, notices,  
assignments, notes and other writings presented to Lender  
by or on behalf of Borrower, at any time, in any way or to  
any extent connected with the events or transactions referred  
to or contemplated in this Agreement, are and will be  
genuine, duly executed, and constitute a valid and binding  
obligation of Borrower, enforceable in accordance with  
their terms; (q) neither the Collateral nor any part thereof  
is or will hereafter be used, to any extent, for personal,  
ly \* provided that Lender shall provide Borrower with copies of  
such filed financing statements indicating time and location  
of filing.

family or household purposes, but instead, all the Collateral is and will hereafter be used solely for commercial and business purposes; (r) it will, upon Lender's request, furnish Lender such information as requested concerning Borrower, the Collateral, and any other matter Lender deems to affect its rights and remedies hereunder, and permit and enable Lender and its designees to inspect, audit, and make copies and extracts from all records and papers concerning any and all of the foregoing. In addition, and without

limiting the generality of the foregoing, Borrower shall furnish Lender <sup>(i)</sup> one hundred twenty (120) ~~xxx xxx xxx~~ days after ~~the~~ <sup>an audited</sup> the end of each of its fiscal years, ~~xx~~ balance sheet and

<sup>\*</sup> (ii) not less often than thirty (30) days after the end of each of TTI's fiscal quarters, a balance sheet and profit and loss statement of Borrower, detail certified by an authorized financial officer of Borrower in such officer's individual and representative capacity, and any other financial information provided to Borrower's stockholders or any public agency; (s) it will not, without the prior written consent of Lender, make any alterations, additions or improvements to the Collateral ("Modifications") which diminish its economic utility. Modifications to the Collateral of whatsoever kind and nature shall be deemed accessions thereto and shall be subject to this Agreement and to Lender's security interest hereunder.

by 4. Borrower hereby agrees to indemnify and save harmless Lender from all losses, costs, damages, liabilities, or expenses, including reasonable attorneys' fees, which Lender may sustain or incur by reason of defending or protecting the security interest herein granted or the priority thereof, or enforcing payment of the Obligations, or in prosecuting or defending any action or proceeding in any way connected to or arising out of this Agreement, the Obligations or the Collateral.

See annexed Exhibit A

[illegible]

6. Borrower, at its expense, shall keep and maintain all risk insurance against any and all loss or damage to the Collateral from any cause whatsoever, for not less than the full replacement value thereof, as well as public liability and property damage insurance covering Borrower's ownership and use of the Collateral. All such policies of insurance shall be in such form, with such companies and in such amounts as may be satisfactory to Lender. Borrower shall deliver to Lender certificates of insurance evidencing all such policies and evidence of the payment of all premiums therefor. All such policies of insurance shall contain a loss payable endorsement in a form satisfactory to Lender which directs the insurance company to pay any and all proceeds thereof directly to Lender. The proceeds of all such insurance, at the option of Lender, shall be applied toward (i) the replacement, restoration, or repair of the Collateral, or (ii) toward payment of the Obligations hereunder in respect of such appropriate Collateral. Borrower hereby irrevocably appoints Lender (and any of Lender's officers,



EXHIBIT A TO SECURITY AGREEMENT BETWEEN  
CROCKER NATIONAL BANK AND TRANSKENTUCKY  
TRANSPORTATION RAILROAD, INC.

DATED OCTOBER 19, 1979

5. Prepayment. So long as no Event of Default (as hereinafter defined) has occurred and is continuing, Borrower shall have the right to prepay any and all notes, in whole or in part, on the date of any installment thereunder; provided, however, that if Borrower prepays all or any part of any installment prior to the due date thereof, it shall pay Lender, in addition to all principal and interest then due or being prepaid, a premium in the following amount:

<u>Year of Prepayment</u>	<u>Premium - Percentage of Balance of Principal Being Prepaid</u>
1	4 %
2	3 %
3	2 %
4	1.5 %
5	.75 %

William H. Egan  
Edw. Phugel.

employees or agents designated by Lender) as Borrower's attorney-in-fact for the purpose of making, settling and adjusting claims under such policies of insurance and for making all determinations and decisions with respect to such policies of insurance. Each such insurer shall agree by endorsement upon the policy or policies of insurance issued by it to Borrower as required above, or by independent instruments furnished to Lender, that it will give Lender at least thirty (30) days written notice before any such policy or policies of insurance shall be altered or cancelled, and that no act or default of Borrower, or any other person, shall affect the right of Lender to recover under such policy or policies of insurance required above, or to pay any premium relating thereto, in whole or in part. \*Lender, without waiving or releasing any Obligations or defaults by Borrower hereunder, shall have the right, but not the obligation, to at any time or times hereafter obtain and maintain such policies of insurance and pay such premiums and take any other action with respect to such policies which Lender deems advisable.

f Borrower shall fail to keep and maintain the insurance required hereunder,

7. Lender may, at its option, pay, purchase, contest, compromise or discharge any attachments, levies, taxes, claims, debts, liens, charges, security interests or encumbrances which in its judgment may affect or appear to affect the Collateral or Lender's rights hereunder; in addition, Lender may pay for the maintenance and preservation of the Collateral. Lender may, from time to time, and without releasing, renew, extend

~~on the terms of payment of any Obliga-~~  
~~tions secured hereunder, release, surrender or sub-~~  
~~stitute any property or other security, or accept~~  
~~any type of further security thereon, without in~~  
~~any way affecting said Obligations.~~ Borrower hereby  
waives (1) diligence, presentment, protest, demand  
and notice of every kind; (2) the right, if any,  
to require Lender to proceed against any person liable  
for the payment of any of the Obligations as a condi-  
tion to or prior to proceeding hereunder; (3) the  
right, if any, to require Lender to foreclose upon,  
sell or otherwise realize upon or collect or apply  
any other property, real or personal, securing any  
of the Obligations, as a condition to, or prior to  
proceeding hereunder.

8. Time is of the essence of this Agreement.

Borrower shall be in default hereunder if any of the  
following shall occur (individually, an "Event of

Default"): (a) Borrower shall fail to pay <sup>any Obligations</sup> when due  
or to perform any Obligations; or (b) any  
warranty, representation, promise or statement made  
or furnished to Lender by or on behalf of Borrower  
was false in any respect when made or furnished;  
or (c) any event shall occur which results in the  
acceleration of the maturity of any debt of Borrower  
to others <sup>exceeding \$25,000.00;</sup> or (d) any of the Collateral shall be

lost, stolen, damaged,\* or encumbered; or (e) there  
shall be any execution or other writ of process

by or against Borrower whereby any of the Collateral  
may be seized, taken or destroyed;\*\*\* or (f) Borrower

shall cease operations, be dissolved, merged, or  
consolidated, terminate its existence or become  
insolvent or unable to meet its debts as they

mature; or (g) Borrower shall make an assignment of  
its property for the benefit of creditors or suffer  
the appointment of a receiver of any part of its property;

\*\*\*unless no other  
Event of Default  
has occurred and is  
continuing, and  
Borrower in the  
exercise of reason-  
able judgment and  
due dili-

gence, shall, have taken steps to terminate such  
execution or writ and such execution or writ  
is terminated no later than 45 days from the date of such execution or writ.

\*or to keep and  
maintain insur-  
ance and such  
failure con-  
tinues for seven  
days after  
Lender gives  
notice of such  
default to  
Borrower.

\*and Borrower  
shall fail to  
promptly re-  
place such Col-  
lateral with  
like equip-  
ment of equal  
utility and  
value, which  
equipment shall  
immediately  
become subject  
to this Agree-  
ment;

or (h) any proceedings under any bankruptcy or insolvency law shall be commenced by or against Borrower or any guarantor or endorser of any Obligations; or (i) any guarantor or endorser of any Obligations shall revoke or terminate its guaranty, or any Event of Default shall occur with respect to any guarantor of Borrower; or (j) Lender in good faith reasonably deems itself insecure for any reason, including, without limitation, the impairment of the prospect of payment or performance of any of the Obligations.

9. Upon the occurrence of Any Event of Default and at any time thereafter, Lender, at its sole option, may exercise any one or more of the following rights and remedies: (a) declare any and all Obligations immediately due and payable without notice or demand of any kind; (b) sue for and recover all amounts then accrued and thereafter accruing; (c) take and maintain possession of any or all Collateral without demand or notice, wherever it may be located, and in so doing, alone or with any other person, enter upon the premises where the Collateral may be found or believed by Lender to be located.

BORROWER HEREBY KNOWINGLY AND INTELLIGENTLY WAIVES PRIOR NOTICE, PRESEIZURE HEARING, AND ANY JUDICIAL PROCESS AS A CONDITION PRECEDENT TO LENDER'S REPOSSESSION OF ANY OR ALL COLLATERAL. BORROWER ALSO WAIVES ANY AND ALL DAMAGES OCCASIONED BY SUCH ENTRY AND SEIZURE;

(d) sell or otherwise dispose of any or all Collateral, whether or not in Lender's possession, in a commercially reasonable manner at public or private sale, and with or without notice to Borrower. Lender may maintain possession and dispose of the Collateral on any premises of Borrower or under Borrower's control, or remove such Collateral or any part thereof to any place Lender may desire. If requested by Lender to do so, Borrower shall, at its expense, assemble, maintain, and make the Collateral available to Lender at a place to be designated by Lender. In the event of sale by Lender, the Collateral need not be in view of those present attending the sale, nor at the same location at which the sale is being conducted, and Lender may sell the same in such order, priority and lots as Lender, in its uncontrolled discretion may designate. Any sale or other disposition hereunder may be adjourned from time to time by announcement at the time and place appointed without further published notice, and Lender may bid and become the purchaser at any such sale. Any requirements of reasonable and proper notice of disposition of the Collateral shall be met if such notice is mailed, postage prepaid, to Borrower at its address set forth above, at least five (5) days before the time of sale or other disposition; (e) apply any proceeds of any disposition of the Collateral to the payment of any or all costs and expenses incurred in connection with such disposition, including without limitation, repossession, holding, preparation for sale, brokers' fees, reasonable attorney's fees and legal expenses, and may apply any balance of such proceeds toward the payment of the Obligations, in such order or application as Lender may elect. Borrower

shall remain liable for any deficiency, which shall be due under the terms of this Agreement and secured hereby, and shall immediately pay any such deficiency to Lender. Any surplus shall be paid to whomsoever may be lawfully entitled thereto, without interest.

10. Lender may have and exercise any or all rights and remedies contained in this Agreement, provided for at law, including without limitation the California Uniform Commercial Code, in equity, and in any and all agreements now or hereafter existing between Lender and Borrower or otherwise. Lender may exercise any and all rights and remedies in such order and priority, and in such manner as Lender, in its discretion, may direct. No delay or failure on the part of Lender in exercising any right, privilege, remedy or option shall constitute a waiver thereof by Lender, and no single or partial exercise by Lender of any right or remedy shall preclude other or further exercise thereof, or any exercise of any other right or remedy. The rights and remedies of Lender under this Agreement, any other agreements between Borrower and Lender, and at law or equity, are cumulative, and may be used successively, alternatively or concurrently, as Lender, in its discretion, may direct.

11. In the event Borrower fails to perform any of its Obligations under this Agreement, Lender may, at its option, but without any obligation to do so, perform such Obligations. Borrower shall reimburse Lender, upon demand, the amount of the cost of such performance, together with interest thereon, at the rate set forth in the Note described in the Schedule in respect of which such Obligations arise.

12. This Agreement shall be construed and enforced according to the laws of the state of California. Venue for any action hereunder or related hereto shall be in the appropriate court in the County of San Mateo, state of California. The provisions of this Agreement are specifically agreed to be severable. If any clause, provision or right provided for herein is unenforceable or inoperative, the remainder of this Agreement shall be enforced as if such clause, provision or right were not contained herein. When the context so requires, the masculine gender includes the feminine and neuter, the feminine includes the masculine and neuter, the neuter includes the masculine and feminine, the singular includes the plural and the plural the singular.

13. This Agreement constitutes the entire agreement between Lender and Borrower and shall not be amended in any manner whatsoever except by written agreement signed by an authorized officer of Lender. All provisions contained in this Agreement shall inure to the benefit of Lender, its successors and assigns, and shall be binding upon Borrower, its successors and assigns. Notwithstanding anything herein contained, Borrower shall not assign this Agreement without Lender's prior written consent, any any prohibited assignment shall be absolutely void. No consent to an assignment by Lender shall release Borrower or any guarantor of their Obligations to Lender. Lender may freely assign this Agreement and its rights and duties hereunder,\* Whenever the word "Lender" is used herein, it shall include all assignees of Lender.

*[Handwritten signature]* *[Handwritten signature]*

14. Any notice from Lender to Borrower shall be conclusively presumed given and received by Borrower when mailed, postage prepaid, to Borrower at its address set forth above.

*[Handwritten signature]* \*and shall give Borrower prompt written notice of any such assignment.

Notice by Borrower to Lender, if mailed, shall be deemed given when received by Lender at Lender's address set forth above.

IN WITNESS WHEREOF, this Agreement has been duly executed as of the day and year first hereinabove written.

*W. G. F.* *Aug.* NATIONAL BANK  
CROCKER EQUIPMENT LEASING INC.

By: *Edward J. Magan.*  
(Title)

TRANSKENTUCKY TRANSPORTATION RAILROAD  
(Borrower) COMPANY

By: *William G. Ferguson*  
(Title) Chairman, Vice President

By: *Vannoy H. K.*  
(Title) Asst Secretary

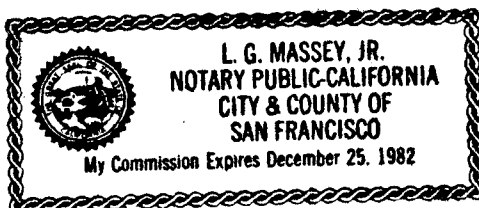
(Corporate Seal)  
Individual or Partnership  
Acknowledgement)

(CORPORATION ACKNOWLEDGMENT)

State of California )  
County of *San Francisco* ) SS.

On this *19* day of *October*, in the year  
*1979*, before me, *L. G. Massey Jr.*  
a Notary Public in and for said State, personally appeared  
*William G. Ferguson, Vice Pres*  
known to me to be the person who executed the within instrument on be-  
half of the corporation therein named, and acknowledged to me that  
such corporation executed the same.

*L. G. Massey Jr.*  
NOTARY PUBLIC





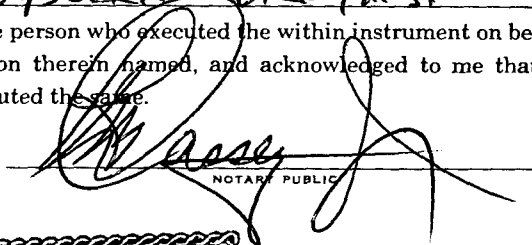
(CORPORATION ACKNOWLEDGMENT)

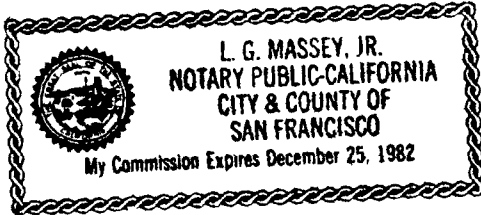
State of California )  
County of SAN FRANCISCO ) SS.

On this 19 day of OCTOBER, in the year  
1979, before me, L.G. MASSEY JR

a Notary Public in and for said State, personally appeared  
Edward Wysocki - Vice Pres.

known to me to be the person who executed the within instrument on be-  
half of the corporation therein named, and acknowledged to me that  
such corporation executed the same.

  
NOTARY PUBLIC



SCHEDULE ONE

TO SECURITY AGREEMENT DATED AS OF

October, 1979, (the "Security Agreement")

BETWEEN CROCKER NATIONAL BANK, AS LENDER

AND TRANSKENTUCKY TRANSPORTATION RAILROAD AS BORROWER.  
COMPANY

NOTE: Dated October 19, 19 79, executed by Borrower  
and made payable to the order of Lender.

COLLATERAL DESCRIPTION:	Fair Market Value
<u>Unit No.</u>	
1072 ALCO RS-3 1200 H.P. Locomotive EMD	\$ 120,000.00
567 Engine	
1075 " " "	120,000.00
1076 " " "	120,000.00
- Spare Generator & Traction Motor	15,000.00

Total Fair Market Value \$375,000.00

LOCATION OF COLLATERAL WHICH IS OR MAY BE FIXTURES, AND NAME AND ADDRESSES  
OF RECORD OWNERS, LANDLORDS AND MORTGAGEES:

NONE

PREPAYMENT: Debtor may prepay the Note referenced hereon upon and  
subject to the terms and conditions set forth in the Security Agreement.

ACCEPTED AND APPROVED THIS 19 day of October, 19 79.

LENDER

BORROWER

CROCKER NATIONAL BANK

TRANSKENTUCKY TRANSPORTATION RAILROAD  
COMPANY

By:

By:

Eduard J. Hays  
Its E. J.

William H. Engman  
Its Vice President